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Supreme Court of the United States.

OCTOBER TERM, 1973.

No. 73-209.

BRUCE R. DESMARAIS ET AL.,
PETITIONERS,

v.

WACHUSETT REGIONAL SCHOOL DISTRICT ET AL.,
RESPONDENTS.

PETITION FOR REHEARING.

RICHARD J. SARAPAS,
CORBIN, SARAPAS, MADAUS & ARAKELIAN INC.,
39 Highland Street,
Worcester, Massachusetts 01608,
Attorney for Petitioners.

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WACHUSETT REGIONAL SCHOOL DISTRICT ET AL.,
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PETITION FOR REHEARING.

The petitioners, Bruce R. Desmarais and Robert F. Desmarais, pray for a rehearing on their petition for writ of certiorari, which was denied on October 9, 1973 (Docket No. 73-209).

Jurisdiction.

The original petition was denied on October 9, 1973, and this petition for rehearing has been filed within 25 days of that date, in accordance with Rule 58.2 of the Rules of the Supreme Court of the United States. The reasons set forth below were not previously presented by these petitioners.

Reasons for Granting Rehearing.

The petitioners have just learned that the Court has granted certiorari in two cases, *viz., Scheuer, Admr.* v. *Rhodes et al.,* Docket No. 72-914, and *Krause, Admr.* v. *Rhodes et al.,* Docket No. 72-1318.

Although the factual and legal situations in *Krause* and *Scheuer* are not identical to those in the instant case, and although the constitutional issues are not identical, the petitioners in good faith believe that there are sufficient similarities to warrant certiorari in the instant case. Specifically and especially, the instant case and the *Krause* case both raise the broad general questions of sovereign immunity, and immunity of public servants from tort liability, and whether or not these doctrines violate the respective petitioners' rights to due process of law and equal protection of laws guaranteed by the Fourteenth Amendment.

For example, compare:

On pages 2 and 3 of the petition in the instant case:

> "The actions below present the following federal constitutional questions:
>
> "1. Does denial by the Massachusetts Court of a plaintiff's right to a trial by jury in an action of tort by a public school student against a public school teacher amount to a denial of due process of law as guaranteed by Amendment XIV to the United States Constitution?
>
> "2. Does the Massachusetts case law which states that a public school student may recover damages in a tort action from a public school teacher only upon a showing of misfeasance (as opposed to nonfeasance) amount to a denial of equal protection of the law as guaranteed by Amendment XIV of the United States Constitution?

"3. *Is the doctrine of 'governmental immunity'* from tort liability violative of said Amendment XIV in the area of tort liability on the part of a public school system to a student within that system?" (Emphasis added.)

On page 24 of the petition in *Krause:*

"Moreover, to the extent that Ohio seeks to claim sovereign immunity (assuming arguendo that the present action were against the State of Ohio), the application of the doctrine of sovereign immunity is unconstitutional in that it violates the rights of these petitioners to due process of law and equal protection of the laws guaranteed in the Fourteenth Amendment. Cf. the dissenting opinion of Justice Lloyd Brown of the Ohio Supreme Court in *Krause Admr.* v. *State of Ohio, supra.*"

The petitioners, of course, have no way of predicting what the ultimate decisions will be in *Krause* and *Scheuer.* Hypothetically, at least, the Court might declare the doctrines of sovereign immunity and official immunity unconstitutional in violation of Amendment XIV. In that event, the rights of these petitioners would be greatly affected, but any favorable decision in *Krause* or *Scheuer* would be to no avail to them, because any *new* action instituted would have long since been barred by the statute of limitations and perhaps by the doctrine of res judicata.

Conclusion.

For the foregoing considerations, and in order to prevent a possible miscarriage of justice, the petitioners respectfully request a rehearing of their petition for writ of

certiorari, and respectfully suggest that should the writ be granted, the case could be argued and decided along with *Krause* and *Scheuer*.

Respectfully submitted,
RICHARD J. SARAPAS,
CORBIN, SARAPAS, MADAUS
& ARAKELIAN, INC.,
Attorneys for the Petitioners.

Certificate of Counsel.

I, Richard J. Sarapas, counsel for the within petitioners, do hereby certify under the pains and penalties of perjury that this petition is presented in good faith and not for purposes of delay, and do further certify that the petition is restricted to the grounds specified in Rule 58.2 of the Rules of the Supreme Court of the United States, viz, "intervening circumstances of substantial or controlling effect . . . or to other substantial grounds available to petitioner, although not previously presented."

RICHARD J. SARAPAS